

FILE COPY

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE APPLICATION	:	
FOR A LICENSE TO PRACTICE AS AN	:	
OCCUPATIONAL THERAPY ASSISTANT OF	:	
	:	FINAL DECISION AND ORDER
BARBARA COLSON,	:	
APPLICANT.	:	

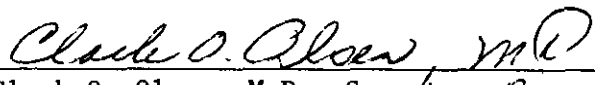
The Wisconsin Medical Examining Board, having met on June 23, 1993, and having received and considered a Stipulation, a copy of which is attached hereto and incorporated herein:

And the Wisconsin Medical Examining Board, having determined that it has jurisdiction to act in this matter pursuant to Wis. Stats. sec. 448.02(2);

NOW, THEREFORE, IT IS ORDERED that the attached Stipulation is approved and adopted by the Wisconsin Medical Examining Board.

IT IS FURTHER ORDERED that Barbara Colson's application for certification as an occupational therapy assistant shall be, and hereby is, GRANTED.

BY THE BOARD


Clark O. Olsen, M.D., Secretary *AO*
Wisconsin Medical Examining Board *3*

GCL:daw
ATY-2580

Y. 100. 111

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE APPLICATION	:	
FOR A LICENSE TO PRACTICE AS AN	:	
OCCUPATIONAL THERAPY ASSISTANT OF	:	STIPULATION
	:	
BARBARA COLSON,	:	
APPLICANT.	:	

It is hereby stipulated between Barbara Colson, personally and Gilbert C. Lubcke, attorney for the Department of Regulation and Licensing, Division of Enforcement, as follows:

1. Barbara Colson, 8802 Cty. Hwy. B, Winneconne, Wisconsin 54986 made application for certification as an occupational therapy assistant and took an oral examination on 1/15/93. Ms. Colson received a failing score on this examination based upon the determination that she had given correct responses to only 13 of the 19 questions on the examination. Correct responses to 14 of the 19 questions were required to achieve a passing score on the examination. On 1/21/93, the Medical Examining Board denied Ms. Colson's application for certification as an occupational therapy assistant.

2. Ms. Colson petitioned for hearing on the denial of her application for certification as an occupational therapy assistant. A hearing was scheduled for 6/3/93.

3. Question #5 of the oral examination was:

"Describe two personality or emotional changes which may occur in post CVA clients."

The grading criteria prepared by the Occupational Therapy Examining Council included as correct responses to this question:

1. "Perseveration--meaningless, nonpurposeful repetition of an act".
2. "Emotional Lability--loss of cortical control of emotional responses and emotional control of automatic laughing or crying."

4. The parties to this Stipulation agree that based upon learned treatises submitted by Ms. Colson and an analysis of Ms. Colson's responses to Question #5 by an expert retained by the State, Ms. Colson provided responses at the oral examination in substantial agreement with the grading criteria set forth above and, therefore, Ms. Colson is entitled to full credit for her answer to this question. The parties further agree that with the correct responses to Question #5, Ms. Colson has achieved a passing score on her oral examination and is entitled to certification as an occupational therapy assistant.

5. The parties stipulate that the Medical Examining Board may enter an Order granting to Ms. Colson certification as an occupational therapy assistant and dismissing this proceeding.

6. The parties waived all costs of this proceeding.

7. Ms. Colson understands that by signing this Stipulation, she freely, voluntarily and knowingly waives her rights including the right to be represented by an attorney; the right to a hearing; the right to confront and cross-examine witnesses; the right to call witnesses on her behalf and to compel their attendance by subpoena; the right to testify on her own behalf; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; the right to judicial review; and all other applicable rights afforded to her under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes and the Wisconsin Administrative Code.

8. The parties to this Stipulation and the Board Advisor, Mikki Patterson, may appear before the Wisconsin Medical Examining Board in support of this Stipulation. Any appearance by either party pursuant to this paragraph shall be preceded by a proper and timely notice to all parties to this proceeding.

9. If any term of this Stipulation is not accepted by the Wisconsin Medical Examining Board, then no term of this Stipulation will be binding in any manner on any party, and the matter will be returned to the Administrative Law Judge for further proceedings.

Dated:

June 9, 1993

Barbara Colson
Barbara Colson
Applicant

Dated:

6/1/93

Gilbert C. Lubcke
Gilbert C. Lubcke
Attorney for the Complainant

GCL:dms
ATY-2546

NOTICE OF APPEAL INFORMATION

**(Notice of Rights for Rehearing or Judicial Review,
the times allowed for each, and the identification
of the party to be named as respondent)**

The following notice is served on you as part of the final decision:

1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with the State of Wisconsin Medical Examining Board.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon the State of Wisconsin Medical Examining Board.

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: the State of Wisconsin Medical Examining board.

The date of mailing of this decision is June 25, 1993.

rehearing in contested cases. (1) A hearing shall not be a prerequisite for appeal or review by a final order may, within 20 days after the order, file a written petition for rehearing in detail the grounds for the petitioning authorities. An agency may grant or deny the petition on its own motion within 20 days after the petition is filed. This subsection does not apply to s. 227.52.

(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(2) The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.

(3) Rehearing will be granted only on the basis of:

(a) Some material error of law.

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

(4) Copies of petitions for rehearing shall be served on all parties of record. Parties may file replies to the petition.

(5) The agency may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 30 days after it is filed. If the agency does not enter an order disposing of the petition within the 30-day period, the petition shall be deemed to have been denied as of the expiration of the 30-day period.

(6) Upon granting a rehearing, the agency shall set the matter for further proceedings as soon as practicable. Proceedings upon rehearing shall conform as nearly may be to the proceedings in an original hearing except as the agency may otherwise direct. If in the agency's judgment, after such rehearing it appears that the original decision, order or determination is in any respect unlawful or unreasonable, the agency may reverse, change, modify or suspend the same accordingly. Any decision, order or determination made after such rehearing reversing, changing, modifying or suspending the original determination shall have the same force and effect as an original decision, order or determination.

227.52 Judicial review; decisions reviewable. Administrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative in form, are subject to review as provided in this chapter, except for the decisions of the department of revenue other than decisions relating to alcohol beverage permits issued under ch. 125, decisions of the department of employee trust funds, the commissioner of banking, the commissioner of credit unions, the commissioner of savings and loan, the board of state canvassers and those decisions of the department of industry, labor and human relations which are subject to review, prior to any judicial review, by the labor and industry review commission, and except as otherwise provided by law.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) 1. Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. If the agency whose decision is sought to be reviewed is the tax appeals commission, the banking review board or the consumer credit review board, the credit union review board or the savings and loan review board, the petition shall be served upon both the agency whose decision is sought to be reviewed and the corresponding named respondent, as specified under par. (b) 1 to 4.

2. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency.

3. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59 (6) (b), 182.70 (6) and 182.71 (5) (g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified. The petition may be amended, by leave of court, though the time for serving the same has expired. The petition shall be entitled in the name of the person serving it as petitioner and the name of the agency whose decision is sought to be reviewed as respondent, except that in petitions

for review of decisions of the following agencies, the latter agency specified shall be the named respondent:

1. The tax appeals commission, the department of revenue

2. The banking review board or the consumer credit review board, the commissioner of banking.

3. The credit union review board, the commissioner of credit unions.

4. The savings and loan review board, the commissioner of savings and loan, except if the petitioner is the commissioner of savings and loan, the prevailing parties before the savings and loan review board shall be the named respondents

(c) A copy of the petition shall be served personally or by certified mail or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon each party who appeared before the agency in the proceeding in which the decision sought to be reviewed was made or upon the party's attorney of record. A court may not dismiss the proceeding for review solely because of a failure to serve a copy of the petition upon a party or the party's attorney of record unless the petitioner fails to serve a person listed as a party for purposes of review in the agency's decision under s. 227.47 or the person's attorney of record.

(d) The agency (except in the case of the tax appeals commission and the banking review board, the consumer credit review board, the credit union review board, and the savings and loan review board) and all parties to the proceeding before it, shall have the right to participate in the proceedings for review. The court may permit other interested persons to intervene. Any person petitioning the court to intervene shall serve a copy of the petition on each party who appeared before the agency and any additional parties to the judicial review at least 5 days prior to the date set for hearing on the petition.

(2) Every person served with the petition for review as provided in this section and who desires to participate in the proceedings for review thereby instituted shall serve upon the petitioner, within 20 days after service of the petition upon such person, a notice of appearance clearly stating the person's position with reference to each material allegation in the petition and to the affirmance, vacation or modification of the order or decision under review. Such notice, other than by the named respondent, shall also be served on the named respondent and the attorney general, and shall be filed, together with proof of required service thereof, with the clerk of the reviewing court within 10 days after such service. Service of all subsequent papers or notices in such proceeding need be made only upon the petitioner and such other persons as have served and filed the notice as provided in this subsection or have been permitted to intervene in said proceeding, as parties thereto, by order of the reviewing court.